or 3651 (1) (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHATTISGARH

Single Bench

S.A No. 80 **/2005**

APPELLANT/ : DEFENDANT

Firoz Ahmed, S/o Abdul Qarim
Aged 40 Years,
Magarpara, Tehsil Bilaspur
District Bilaspur (C.G)

VERSUS

RESPONDENT/ ; PLAINTIFF

Ramashankar Yadav, S/o
Ramprasad
Aged 62 years
Retired A. M Quality Control,
Magarpara, Tehsil Bilaspur
District Bilaspur (C.G)

A04/05 Respondent/Plaintiff
F. No.
Presented by Shri
dated 10.02.05

SECOND APPEAL U/S 100 OF CODE OF CIVIL PROCEDURE 1908

(17)

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Second Appeal No.80 of 2005

Appellant/ Defendant :- **Firoz Ahmed**

Vs

Respondent/ Plaintiff :- **Ramashankar Yadav**

Appellant by Shri Vimlesh Bajpai, Advocate.

JUDGEMENT
(Delivered on 8/04/2005)

Heard on admission.

2. The appellant/defendant herein has preferred this second appeal as he is aggrieved by the impugned judgement and decree dated 30.10.2004 passed in Civil Appeal No. 41-A/2004 by Xth A.D.J. (Fast Track Court), Bilaspur and by which the judgement and decree for eviction dated 30.11.2002 passed in Civil Suit No. 55-A/2001 by IVth Civil Judge, Class-II, Bilaspur has been confirmed. (Parties hereinafter shall be described as per their description in the trial Court).

3. The case of the plaintiff before the trial Court was that the suit shop in question was let on rent by his father on a monthly rent of Rs.250/- to the appellant/defendant. The rent was subsequently enhanced to Rs.300/- per month. After death of the father of the plaintiff, the plaintiff being the alone successor of his father inherited the property in the year 1991 and since then he is in possession of the property. The suit shop was taken by the defendant on rent for the purposes of Radio and T.V. recording business. The plaintiff was earlier Dy. Manager, Quality Controller in Balco who retired on 30.06.1997. It is further pleaded by the plaintiff that earlier he filed a suit for ejectment on 04.08.1993 which was registered as Civil Suit No. 7-A/1993 in the Court of IInd Civil Judge, Class-I, Bilaspur on the ground that he needs the suit shop for opening Hardware shop of his own as he is taking voluntary retirement. However, the suit was dismissed

on the ground that the plaintiff had not taken voluntary retirement. The plaintiff earlier also preferred a regular civil appeal against the dismissal of the suit for eviction and for this he had also moved an application under Order 41 Rule 27 of the C.P.C. for permission to file documents at the appellate stage and along with this application he filed a document showing that he has been retired from his services with effect from 30.06.1997. However, the application filed under Order 41 Rule 27of the C.P.C. by the plaintiff as also the appeal preferred by the plaintiff was dismissed by the lower appellate Court vide order dated 2nd August 1999.

4. After the dismissal of the appeal, the plaintiff has filed the instant suit for eviction on the ground that he is the owner of the suit shop which has been given on a monthly rent of Rs.300/- to the defendant for the purposes of business and after retirement, the plaintiff bonafidely requires the suit shop for opening of Hardware shop as he has to look after the large family consisting of his mother, wife, children, uncle and aunty and further that he has no other reasonably suitable alternative accommodation available in the Bilaspur corporation area for the said business and the shop in question is suitable for his business. It is pleaded by the plaintiff that the defendant did not vacate the suit premises even after notice and therefore damages at the rate of Rs.1,500/- per month was also claimed by the plaintiff as the prevailing market rate in the area for such shop is Rs.1,500/- per month.

5. That, the defendant denied the averments of the plaint and also denied that the plaintiff requires the suit accommodation bonafidely for opening of his business. It was further pleaded that the earlier suit filed by the plaintiff against the defendant for eviction from the suit premises for the same purpose has been rejected and even the appeal of the plaintiff has been dismissed and as such the suit is barred by law of res judicata. The bonafide necessity was also denied and it was pleaded that the plaintiff has been in possession of suitable alternative accommodation and therefore, the suit of the plaintiff deserves to be dismissed as the same has been filed with a view to extract enhanced rent.

6. On the basis of the pleadings of the respective parties, issues were framed by the trial Court and the trial Court decreed the suit by recording a finding that the plaintiff requires the suit accommodation described in schedule 'A' of the plaint bonafidely for his business and he does not have

any reasonably suitable alternative accommodation for the above purposes in the Bilaspur corporation area and the suit is not barred by doctrine of res judicata. However, the claim of damages at the rate of Rs.1,500/- per month has been held to be not proved and accordingly, a decree of eviction and damages at the rate of Rs.1,000/- per month from the date of judgment till the date of handing over the vacant possession of the suit accommodation to the plaintiff has been passed. The appeal of the appellant was also dismissed by the lower appellate Court.

7. That, the judgment of the trial Court is based on the finding that the suit is not barred by doctrine of res judicata as the earlier suit was filed on the ground of bonafide necessity and non-payment of rent. However, as the plaintiff could not prove the bonafide necessity, the suit was dismissed. Now, after retirement on the ground of bonafide necessity the suit has been filed and therefore, the instant suit is based on different cause of action and as such the suit is not barred by law of res judicata. The trial Court has also recorded a finding that the suit accommodation is required bonafidely by the plaintiff for the purposes of opening Hardware shop as after retirement, he needs the same bonafidely for livelihood of his family members and he does not have any alternative suitable accommodation in his possession in the Bilaspur town. Thus, on the basis of the analysis of the evidence and material available on record, the trial Court decreed the suit in favour of the plaintiff and the judgment and decree passed by the trial Court has been subsequently confirmed by the first Appellate Court after dealing with the material and evidence available on record.

8. Learned counsel for the appellant/defendant submits that both the Courts below have erred in holding that the suit is maintainable and the earlier dismissal of the suit for eviction preferred by the plaintiff does not constitute res judicata. Learned counsel submits that the earlier suit was also preferred by the plaintiff against the defendant for eviction from the same suit house on the ground of bonafide necessity for his own business under Section 12 (1) (f) of the Accommodation Control Act, which was dismissed by the trial Court and the same was subsequently dismissed by the first Appellate Court even after the appellant stood retired and therefore, the instant suit between the same parties for the same relief and on the same ground is not maintainable on the ground of res judicata.

9. I have heard learned counsel for the appellant and have gone through the pleadings of the earlier suit and findings of both the Courts below.

10. The earlier suit was dismissed by the trial Court only on the ground that the plaintiff of that suit had filed the suit for eviction on the ground that he shall be taking voluntary retirement. However, no evidence was adduced by the plaintiff that he stood retired and on this ground, the bonafide necessity was held to be not proved and accordingly, the suit was dismissed. The appeal was also dismissed as the plaintiff had failed to establish that he had retired from his services and as such he needed the suit premises bonafidely for opening of his business. But, in the present case the suit has been filed on the ground that the plaintiff is a retired person who needs the suit premises bonafidely for opening his shop and he does not have any reasonably suitable alternative accommodation available in Bilaspur corporation area.

11. Thus, from perusal of the pleadings of both the suits, it is clear that the cause of action in both the suits is different as in the present case, the ground taken by the plaintiff is that he has retired from his services on 30.06.1997 whereas the earlier suit was filed on the pleading that he shall be taking voluntary retirement after getting vacant possession of the suit premises.

12. In the aforesaid circumstances, I am of the opinion that the instant appeal has no merit and the judgment and finding of the earlier round of trial between the parties does not constitute res judicata and the above concurrent findings of facts of both the Courts below that the plaintiff after retirement requires the suit shop bonafidely for the purposes of opening his business and that he does not have any reasonably suitable alternative accommodation in his possession in Bilaspur town, are based on the objective analysis of the material and evidence available on record and the same does not call for any interference in the second appellate stage. Therefore, the instant second appeal has no merits and it does not involve any substantial question of law for its adjudication and the same deserves to be dismissed at the motion stage itself and it is dismissed accordingly.

13. However, there shall be no order as to costs.

Sd/-
Dhirendra Mishra
Judge

Khan